

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

BEFORE THE CHIEF PROCUREMENT  
OFFICER FOR CONSTRUCTION

IN THE MATTER OF: CONTROVERSY

CASE NO. 2012-001

NCM DEMOLITION AND REMEDIATION

DISMISSAL

v.

UNIVERSITY OF SOUTH CAROLINA

POSTING DATE:

JANUARY 4, 2012

WARDLAW ASBESTOS ABATEMENT OF  
FIRST AND SECOND FLOORS  
PROJECT H27-I913

This matter came before the Chief Procurement Officer for Construction (CPOC) pursuant to a request by NCM Environmental, LP, f/k/a NCM Demolition and Remediation, LP (NCM), under the provisions of section 11-35-4230 of the South Carolina Consolidated Procurement Code, for an administrative review of a contract controversy regarding the Wardlaw College Asbestos Abatement ("the Project"), for the University of South Carolina (USC). The request for resolution of a contract controversy is attached as Exhibit A.

### DECISION

On December 30, 2010, the parties submitted to the CPOC a settlement agreement, which the CPOC determined to be appropriate and approved. This Settlement Agreement is attached as Exhibit B. Based on the parties' mutual good faith commitment to perform as set forth in the settlement agreement, the CPOC dismisses the request for resolution of a contract controversy.

  
John St. C. White  
Chief Procurement Officer for Construction

4 Jan 12  
Date

*Hamilton Martens & Ballou*

ATTORNEYS AT LAW

Tracy T. Vann  
803-329-7620  
[tvann@hmandb.com](mailto:tvann@hmandb.com)

July 27, 2011

US Mail and E-mail ([jswwhite@mmo.sc.gov](mailto:jswwhite@mmo.sc.gov))

John St. C. White  
Chief Procurement Officer – Construction  
Office of the State Engineer  
1201 Main Street, Suite 600  
Columbia, SC 29201

**Re: Asbestos Abatement – Wardlaw College, University of SC**  
**Project No.: H27-I913**

Dear Mr. White:

I am writing on behalf of NCM Environmental, LP, f/k/a NCM Demolition and Remediation, LP (“NCM”) to request that resolution proceedings in the above-referenced matter be initiated, pursuant to S.C. Code Ann. § 11-35-4230. The basis for NCM’s request is as follows:

**STATEMENT OF FACTS**

On May 2, 2011, USC published an “Invitation for Minor Construction Quotes.” The invitation sought construction quotes for the “removal and disposal of approximately 11,094 SF of asbestos-containing floor tile & mastic in the hallways and selected areas on the first and second floors of Wardlaw College” (the “Project”). A copy of the invitation is attached.

On or about May 6, 2011, in response to USC’s invitation, NCM submitted a quote to perform the requested tile and mastic asbestos removal services on the Wardlaw Project. NCM’s quote contained a base bid of \$34,800.00.

USC issued NCM a Notice of Intent to Award, followed by a Notice to Proceed on May 13, 2011. A pre-construction meeting was held on May 13, 2011. Work commenced on May 20, 2011 and was completed on June 12, 2011. A copy of the purchase order and work order between the parties, along with the asbestos take off, is attached hereto for your reference and incorporated herein (collectively, the “Contract”).

During the course of work, NCM discovered misrepresentations by USC and/or a series of undisclosed and unforeseeable conditions to the Project premises, which significantly increased NCM’s work under the Contract.

Hamilton Martens & Ballou, LLC

NCM made multiple requests for change orders in regards to the additional work, but all such requests were denied, without explanation. Most recently, by letter dated June 28, 2011, NCM wrote USC to make one final effort to receive a change order for the work, or at least a basis as to why a change was being denied. No response was received.

NCM's June 28, 2011 letter summarizes each of the undisclosed conditions and/or misrepresentations NCM encountered on the Project, along with the costs incurred by NCM as a result of the changed conditions and/or misrepresentations. A copy of the June 28, 2011 letter is attached hereto and incorporated herein by reference.

The misrepresentations and/or changed conditions encountered by NCM, coupled with USC's failure to provide a change order for the same, constitutes a "controversy between a governmental body and a contractor arising by contract," pursuant to S.C. Code Ann. § 11-35-4230.

### **REQUEST FOR RESOLUTION**

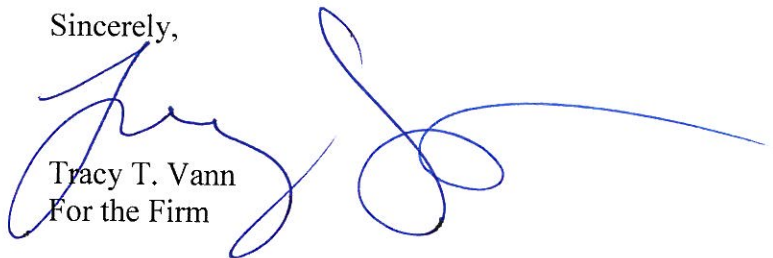
Based on the foregoing, NCM hereby requests resolution of the controversy pursuant to § 11-35-4230(2), that the applicable Chief Procurement Officer ("CPO") investigate this matter and initiate settlement discussions pursuant to § 11-35-4230(3), and if settlement discussions are unsuccessful, that the CPO undertake administrative review of this matter and order USC to issue and pay NCM's requested change order, for additional work performed, in the amount of \$34,700, pursuant to § 11-35-4230(4), *et seq.*

By copy of this letter, I am notifying USC of this request. Additionally, pursuant to local rules, I hereby certify that I have made previous attempts to resolve this controversy with USC, to no avail.

Thank your for your consideration of this matter.

With best regards, I remain,

Sincerely,



Tracy T. Vann  
For the Firm

TTV/kak  
Enclosures

cc: Lind Jackson  
University of South Carolina  
Facilities Planning & Construction  
743 Greene Street  
Columbia, SC 29208

Craig Spires  
Project Manager  
University of South Carolina  
743 Greene Street  
Columbia, SC 29208

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE MATTER OF: CONTROVERSY  
NCM DEMOLITION AND REMEDIATION

v.

UNIVERSITY OF SOUTH CAROLINA  
WARDLAW ASBESTOS ABATEMENT  
OF FIRST AND SECOND FLOORS  
PROJECT NO. H27-I913

---

BEFORE THE CHIEF PROCUREMENT  
OFFICER FOR CONSTRUCTION

ORDER APPROVING SETTLEMENT

CASE NO. 2012-001

POSTING DATE:  
DECEMBER 30, 2011

### SETTLEMENT AGREEMENT AND MUTUAL RELEASE IN FULL

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned, NCM Demolition and Remediation, LP ("NCM"),

FOR AND IN CONSIDERATION OF the sum of \$12,500.00, in hand paid to NCM, the receipt and sufficiency of which is hereby acknowledged, NCM, for itself, its partners, heirs, assigns, successors, and all others claiming an interest through it,

HEREBY RELEASES, ACQUITS AND FOREVER DISCHARGES the University of South Carolina, its agents, servants, employees, officers, directors, insurers, sureties, successors and assigns ("the University"),

OF AND FROM ANY AND ALL CLAIMS, demands, debts, actions, causes of action, costs (including attorney's fees) or other claims of whatsoever nature, now existing or which may hereinafter accrue, arising out of the contract between the parties for State Project No. H27-I913 ("Wardlaw Asbestos Abatement of First and Second Floors," hereinafter "the Project"), including but not limited to the claims set forth in NCM's letter to the Chief Procurement Officer for Construction ("CPOC") dated July 27, 2011.



IN CONSIDERATION OF THE ABOVE PAYMENT, NCM agrees that this payment shall not be construed as an admission of liability on the part of the party or parties hereby released.

THE UNIVERSITY, FOR AND IN CONSIDERATION of the compromises and mutual releases recited herein, hereby releases, acquits and forever discharges NCM, its agents, servants, employees, officers, directors, insurers, sureties, successors and assigns,

OF AND FROM ANY AND ALL CLAIMS, demands, debts, actions, causes of action, costs (including attorney's fees) or other claims of whatsoever nature, now existing or which may hereinafter accrue, arising out of the contract between the parties for the Project, including but not limited to the claims set forth in the University's letter to the CPOC dated November 7, 2011.

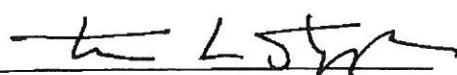
FURTHER, the parties agree that this settlement agreement resolves the above-dated requests for resolution letters filed with the CPO and said requests will be dismissed upon the CPO's approval of this settlement agreement.

THIS SETTLEMENT AGREEMENT and Mutual Release in Full shall be governed by the laws of the State of South Carolina including the dispute resolution procedures of S.C. Code Ann. § 11-35-4230. It is subject to, and shall become effective upon, the approval of the CPOC.

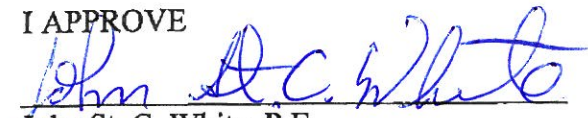
IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, this

21<sup>st</sup> day of December, 2011.

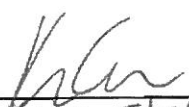
University of South Carolina

  
By: **THOMAS L. STEPP**  
Its: **SECRETARY, UNIVERSITY OF S.C.**

I APPROVE

  
John St. C. White, P.E.  
Chief Procurement Officer for Construction  
December 20, 2011

NCM Demolition and Remediation, LP

  
By: **KARAN SHAH**  
Its: **Branch Manager**

November 28, 2011

**NCM DEMOLITION AND REMEDIATION, LP**

**CONSENT OF THE GENERAL PARTNER**

The undersigned, being the general partner of NCM Demolition and Remediation, L.P., a Delaware limited partnership (the "Partnership"), in lieu of holding a special meeting of the general partner of the Partnership, hereby takes the following action and adopts the following resolution by written consent pursuant to the Limited Partnership Agreement of the Partnership and Section 17-405(d) of the Delaware Revised Uniform Limited Partnership Act:


RESOLVED, that the following person be, and hereby is, elected to serve as a representative of the Partnership for the purpose of signing and executing bids, bonds, contracts, leases, and other articles of business on behalf of the Partnership, until such time as his or her earlier resignation, removal or termination:

Karan Shah

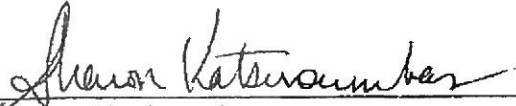
The action taken by this consent shall have the same force and effect as if taken at a special meeting of the general partner duly called and constituted pursuant to the Limited Partnership Agreement of the Partnership and the laws of the State of Delaware.

IN WITNESS WHEREOF, the undersigned have executed this Consent of the General Partner as of the date first written above.

NCM DEMOLITION AND REMEDIATION GP, INC.

By:   
Name: Subhas Khara  
Its: President

Subscribed and sworn to (or affirmed) before me on the 28<sup>th</sup> day of November 2011 by Subhas Khara, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

  
Sharon Katsiroumbas

